IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

CRL.A.No. 375 of 2007(B)

SC.299/2006 of ADDL. SESSIONS COURT (ADHOC)-II, TRIVANDRUM
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APPELLANT:

E.K.BASHEER, C.NO.1359,
CENTRAL PRISON, TRIVANDRUM.

BY ADV. SRI.LIJU. M.P

RESPONDENTS:

STATE OF KERALA, REP.BY A PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MOHAMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 12/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN,J

CRL.A.NO.375/2007

Dated this the 12th day of July, 2007

JUDGMENT

The second accused in Sessions Case No.299/2006 on the file of the Additional Sessions Court (Fast Track I) Thiruvananthapuram is the appellant. The appellant faced trial for the offence punishable under Section 20(b)(ii) B of the NDPS Act along with accused Nos. 1 and 3.

2. The prosecution allegation against the appellant and other accused is as follows:

PW8, the Sub Inspector of Police, Pangod Police Station had received a telephonic information on 15.5.2005 at about 6.30 a.m. that the appellant, named Idukki Basheer, having black colour in complexion, lean and wearing a lunki of blue colour and a check shirt was standing near Harris Bridge by holding a packet containing ganja

and on getting that information and on recording the same in the General Diary, he informed the matter to the Circle Inspector of Police, Venjaramoodu, his immediate superior officer. Thereafter PW8 along with his police party including PW3 went near the Harris Bridge and the Sub Inspector had seen that the appellant was standing there by holding a cover in his hand and the appellant, on seeing the police party, ran towards east, but he was chased and fell down on sustaining certain injuries on his body. On further questioning the appellant, it was found that the cover contains ganja and PW8 asked the appellant whether he is having any other cover with ganja for which he answered in negative. However, he had answered that the owner of the ganja in his cover is A1 i.e. one Surendran. PW8 informed him that he wanted to search the body of the appellant and on informing him whether he requires the presence of a gazetted officer for searching his body, the appellant stated that he wanted such presence. So PW8 informed PW5, Tahsildar, Nedumangad by a letter through a police constable and PW5 reached at the spot and thereafter PW8 searched the body of the appellant and verified the cover found in the hand of the appellant and it is seen that there is ganja inside the

cover being wrapped with English news paper. PW8 again searched the pocket of the appellant and found a small bundle and when the bundle is examined it is seen that there is also ganja being wrapped with English news paper and both the cover and the packet taken from the pocket were weighed and it was found that it contains 1030 gms. of ganja. So the appellant was arrested and on preparing Ext.P1 seizure mahazar, two samples, each of them having 25 gms. taken from the cover as well as the packet, were sent for analysis. Thereafter both the appellant and the contraband articles were produced before the police station and registered a crime against the appellant. On further questioning the appellant, it was revealed that the rest of ganja was kept in the house of A1 and on searching A1's house, a weighing balance was found out and it was further revealed that A3 was also involved in the commission of the offence. Subsequently, A3 was also arrested. After the arrest of the appellant and other accused, PW8 continued investigation as directed by the Circle Inspector of Venjraramoodu as he was engaged in some other cases. Subsequently, PW7 the Circle Inspector continued investigation and had filed final charge. The further case of the prosecution is that

the sample taken from the contraband article were got analysed by public analyst and as per Ext.P2 chemical report it was reported that the samples analysed are `ganja'. On the basis of the evidence collected and in the light of Ext.P2 chemical report, a charge was filed and the appellant and other accused faced trial. To prove the case against the appellant and other accused, the prosecution examined PW's. 1 to 8 and relied on Exts.P1 to P6. After closing the prosecution evidence, the appellant and the other accused were questioned under Section 313 Cr.P.C. The appellant denied the prosecution charge and he had further stated that he is innocent in the matter and the police arrested him alleging that he has committed a petty case and after two days he was produced before the court and this case is hoisted against him by the police. However, after considering the entire evidence, the trial court found the appellant guilty under Section 20(b)(ii)B and he was convicted thereunder and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.25,000/- with default payment of fine to undergo a further period of rigorous imprisonment for six months. The trial court acquitted accused Nos.1 and 3. The above judgment of the trial court finding the appellant

guilty and the sentence awarded against the appellant are challenging in this appeal.

3. This appeal is filed through the jail authorities and since the appellant is not having a counsel of his own choice, a member from the state brief panel has been appointed to argue the case for and on behalf of the appellant. This court heard the learned counsel appearing for the appellant and the learned Public Prosecutor appearing for the State. The learned counsel appearing for the appellant had taken the following contentions before this court challenging the judgment of the trial court. Firstly, it is contended that the trial court had committed serious error in placing reliance to the official witnesses to find the appellant guilty of the offence charged as the independent witnesses cited and examined in this case turned hostile to the prosecution and they were not supporting the prosecution case at all. Secondly, it is contended that PW8 had not complied with Section 42 of the NDPS Act as there is no evidence adduced before the court to prove that he had conducted investigation of the case as per the provisions of the NDPS Act. Thirdly, it is contended by the learned counsel for the appellant that the evidence adduced by PWs.3,5,7 and 8 is not enough to prove

that the appellant was found in possession of 1030 gms. of ganja so as to finding him guilty under Section 20(b)(ii) of the NDPS Act. Lastly, it is contended by the counsel that even if it is proved by the prosecution that the appellant was found in possession of 1030 gms. of ganja, the sentence awarded against the appellant is excessive.

4. The prosecution case as revealed through the evidence of PWs.3,7 and 8 is that on getting secret and reliable information that the appellant was standing at the Harris Bridge with a cover containing ganja, PW8, PW3 and other police officials went near the Harris Bridge and found that the appellant is standing there. Even though on seeing the police party, the appellant tried to escape from the scene and the police party chased the appellant and stopped and on further questioning him it was revealed that he is having ganja. Hence PW8 had informed him that he is intended to search the body of the appellant and if the appellant wanted the presence of a gazetted officer, he may have that right as per section 50 of the NDPS Act. As the appellant answered that he wanted the presence of a gazetted officer, PW8 informed PW5, the Tahsildar Nedumangad and Tahsildar came to the scene and in the presence of PW5, the body of the

appellant was searched by PW8. On search, it is found that the pocket of the appellant contains 30 gms. of ganja and the cover held by the appellant contains 1000 gms. of ganja. As per the rules, on preparing Ext.P1 seizure mahazar, both the cover and the packet taken from the pocket were seized and in the presence of independent witness, namely, PWs.1 and 2, PWs.3 and 5 and other witnesses, PW8 had taken two samples of 25 gms. of ganja each from the cover and the packet taken from the pocket of the appellant for analysis and later it was found that the sample is ganja. To prove the case against the appellant, the trial court relied on the evidence of PW3,5,7 and 8. Out of the above witnesses PW8 is the Sub Inspector who detected the crime. He had given evidence before the court as per the prosecution case. He had categorically stated before the court that he had got information that the appellant was standing near the Harris Bridge with ganja and when the police party searched him, he asked the presence of a gazetted officer and in the presence of PW5 the gazetted officer, the body of the appellant was got searched. This witness had further stated that he had taken sample from the cover for analysis and the remaining ganja were sealed and labelled as per the

rules in the presence of PW3,PW5 and other witnesses. He had also stated before the Court that he had weighed the cover and found that the cover contains ganja having 1000 gms. of weight and the packet seized from the pocket of the shirt of the appellant weighing 30 gms. Even though this witness was cross examined at length, his evidence is not shattered by the defence. The only criticism now levelled against this witness is that he had not complied with Section 42 of the NDPS Act. As per Section 42 of the NDPS Act, it is the duty of an officer empowered under Section 42 to take down any information in writing on record and he shall report the same within 72 hours and a report shall be sent to his immediate superior officer. PW8 had categorically stated before the court that the information which he has been reduced in writing and entered the fact in the General Diary and informed the matter to the Circle Inspector Venjaramoodu who was the immediate superior of PW8. It is also seen from Ext.P1 mahazar that the information which he got has been already reduced in writing and recorded in the General Diary. Though Ext.P1 does not show that he has not sent any report to the superior officer that by itself is not a reason to doubt the action taken by PW8. That apart even though as

per Section 42 it is the duty of the officer who reduced the information in writing and sent a report to the superior officer, it is not proved in this case that the non-production of general diary or copy of the report which is sent to the superior officer caused any prejudice to the appellant in the light of the case set up by the appellant when he was questioned under Section 313 of the Code. The obligation cast on the officer under Section 42 is that he has to reduce in writing the information which he got and shall report the same to the superior officer within 72 hours and it is not imperative on the part of the officer to produce records which would show that he had acted as per Section 42 of the Act. In the above circumstances, the evidence of PW8 is rightly accepted by the trial court. The evidence of PW8 has been thoroughly corroborated with that of the evidence of PW3 who also accompanied PW8 at the time of detection of the crime. Apart from the evidence of PW3 the evidence of PW5, the Gazetted Officer who was brought at the scene of occurrence has also supported the action taken by PW8. The trial court again considered the evidence of these witnesses and concluded that the prosecution succeeded in proving that the appellant was found in possession of the contraband

article. The next question to be considered in the light of the argument of the learned counsel is that from the evidence adduced by the prosecution it can be concluded that the appellant was in possession of 1030 gms. of ganja. In this context Ext.P2 chemical certificate would show that out of the two samples of 25 gms. taken by PW8 and one packet having 25 gms. taken from the pocket of the appellant were weighed by the analyst and found that these samples contain 27.606 gms. each and 28.336 gms. respectively and Ext.P2 certificate clearly shows that the sample analysed is ganja. If so, the contention of the learned counsel for the appellant that Ext.P1 does not show that the article was weighed after removing the cover, namely, the plastic cover and also the news papers and it is not possible to hold that the article seized is weighing 1030 gms. In this context the evidence of PW8 clearly shows that he weighed the contraband article after removing the cover and the news papers. If so it is not possible to doubt that the articles seized is not weighing 1030 gms. The evidence now adduced by the prosecution would prove that the article seized both from the cover as well as from the packet taken from the pocket of the appellant weighing 1030 gms., that means, the appellant was in

possession of more than 1000 gms. of ganja. In the above circumstances, the finding of the trial court that the appellant was in possession of 1030 gms. of ganja is on the evidence and there is no infirmity in that finding. If so, the trial court rightly found that the appellant had committed the offence punishable under Section 20(b)(ii) B of the NDPS Act. The next question to be considered is that the sentence now awarded against the petitioner is excessive or not. The trial court had considered this issue also while imposing sentence against the appellant. The trial court found that the appellant had committed offence and the trial court imposed punishment on the appellant. On considering the fact that selling of ganja or any other narcotic drug is dangerous to the society, this court is of the view that the sentence now awarded against the petitioner is not excessive. In the above circumstances, the judgment of the trial court is confirmed and consequentially the appeal stand dismissed.

K.THANKAPPAN,
JUDGE

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K.THANKAPPAN,J.

CRL.A.375/2007

JUDGMENT

12.7.2007